

MAY - 8 1996

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

To the Commission:

RM 8775

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The National Telephone Cooperative Association (“NTCA”) submits these comments to the Petition for Declaratory Ruling, Special Relief and Institution of Rulemaking filed on March 4, 1996, by America’s Carriers Telecommunication Association (“ACTA”).

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NTCA is a national association of approximately 500 local exchange carriers ("LECs"). These LECs provide telecommunications services to end users and interexchange carriers throughout rural America.

ACTA asks that the Commission immediately stop the sale by various vendors of software that makes it possible for Internet users to avoid toll charges for interexchange, intraLATA and interLATA and international voice calls. It also asks that the Commission begin a rulemaking to define permissible communications over the Internet and issue a declaratory ruling establishing its authority over interstate and international telecommunications services using the Internet.

NTCA does not support ACTA's position that software vendors are common carriers or its request for an order restricting the business of such vendors. The Commission has not been given explicit authority over the sale of software or over the content of information transmitted on the Internet or elsewhere. The public policy encouraging the development of the information super highway and the proliferation of services like the Internet does not favor issuance of a federal ban of software sales or regulation of the content of transmissions over the Internet. In fact, the 1996 Act makes "access to advanced telecommunications and information services . . . in all regions of the Nation" a principle that the Commission must consider in making rules to preserve and advance universal service.¹

However, to the extent that internet access providers engage in the provision of interstate common carrier communications or "telecommunications service" they appear to be subject to the

¹ Section 254(b)(2), 47 U.S.C. § 254 (b)(2).

Commission's jurisdiction.² The Commission's statutorily established jurisdiction over "interstate and foreign commerce in communications by wire and radio" is the basis for its authority over access charges and the rates, charges and services provided by interstate interexchange carriers.³ This authority permits it to address network pricing and costing issues integral to the provision of services that utilize the networks subject to regulation.

"Free service" for the completion of voice calls over the Internet is not "free." The service utilizes local and long distance networks that users pay for through the access charge structure and the tariffed rates of long distance carriers. Internet providers and other enhanced service providers connect to local exchange carriers in a manner that is functionally not materially different from the way in which LECs connect to interexchange carriers. In both cases, the subscriber dials numbers and is provided, for a fee, the capability of transmitting information of the subscriber's choosing to a location in another state. Despite this similarity, the two types of entities and traffic are not treated similarly. As Internet usage continues to grow on an exponential rate, the Commission must take this usage into account in order to protect the integrity of its jurisdictional separations and access charge rules. The Commission should review the issue in conjunction with its planned comprehensive review of access charges.

The Commission is also obliged to address the "free service" issue in conjunction with its obligation to fashion rules to implement universal service mandates announced in the 1996 Act. One of those mandates requires that Commission rules contain provisions that "all providers of

² See, 47 U.S.C. §§ 153(10), (22), (43), (44), (46). Whether or not a provider of interstate common carrier or telecommunications services provides capability for data (e.g. e-mail) or voice is irrelevant to the Commission's jurisdiction which encompasses all forms of transmission.

³ 47 U.S.C. § 151.

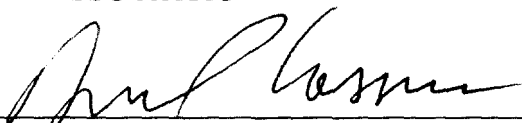
telecommunications services” “make an equitable and nondiscriminatory contribution to the preservation and advancement of universal service.”⁴ While software vendors may not be covered by the definition of providers, Internet access services and other information service providers are. Their contribution to universal service should be fashioned in a manner that implements the equitable scheme contemplated in mandating “equitable and nondiscriminatory contributions.” Neither LECs, long distance providers, nor other subscribers and customers should have to bear the cost associated with “free service” over the Internet. Commission access rules and/or universal service mechanisms must be fashioned to ensure that costs are born by cost causers and that the universal service obligation is shared by all users of the public network. The Commission should change the access charge rules to include provisions that require enhanced service providers to pay access charges in connection with their services that utilize LEC networks to complete long distance calls.

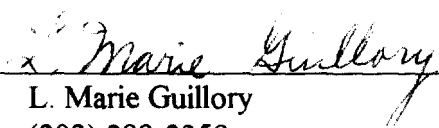
⁴ Section 54(d), 47 U.S.C. § 254(d).

For the above stated reasons, NTCA supports ACTA's petition only to the extent that it requests review of the issues regarding the regulatory status of Internet or other information service providers.

Respectfully submitted,

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May 8, 1996

CERTIFICATE OF SERVICE

I, Rita H. Bolden, certify that a copy of the foregoing Comments to the Petition for Declaratory Ruling, Special Relief and Institution of Rulemaking filed on March 4, 1996 by America's Carriers Telecommunication Association on this 8th day of May 1996, by first-class, U.S. Mail, postage prepaid, to the following persons on the attached list:

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